

**Southern Minnesota Regional Legal Services, Inc.**  
**PRACTICE STANDARDS FOR IDENTIFYING AND ADDRESSING**  
**DISCRIMINATORY PRACTICES**

**Standards for Analysis**

**Standard 1**

SMRLS Advocates should ascertain 1) whether the client is a member of a protected class under an applicable anti-discrimination law, 2) whether the client, if protected, is receiving, or entitled to receive, services or benefits from a public service or program bound by an applicable anti-discrimination law, 3) whether a discriminatory policy, practice, action or inaction attributable to such program or service might be a significant contributing factor to the client's problem, and 4) whether remedies important to achieving the client's objectives might be reasonably attainable under applicable anti-discrimination laws.

**Comment:** The above information should be ascertained in the course of complying with General Practice Standards 1.1 (determining the scope of representation), 1.5 (determining the client's objectives), and 4.1 (exploring the client's legal problem).

Advocates should be aware that protected class clients frequently eligible for SMRLS services include 1) clients of different racial and ethnic backgrounds, 2) mentally or physically impaired clients, 3) women, 4) elderly clients, 5) clients who receive some form of public assistance, and 6) clients with protected marital status. The Minnesota Human Rights is broad in the scope of protected class persons it covers and, in addition to the above, includes protections based on sexual orientation and religion.

Applicable anti-discrimination laws to which Advocates should look (at least insofar as those laws pertain to services and programs associated with the Advocate's substantive area of practice) include, but are not limited to, 1) Title VI of the 1964 Civil Rights laws, 42 USC § 2000D *et seq.*, prohibiting discrimination in federally assisted programs, 2) the Minnesota Human Rights Act, prohibiting discrimination in public services, public accommodations, housing, and education, 3) the Federal Fair Housing Act, 42 USC §3601 *et seq.*, and 4) Title II of the Americans With Disabilities Act, 42 USC § 12132, focusing on public services discrimination.

Advocates should be aware of public services and programs which are bound by one or more anti-discrimination laws. Such services and programs include federal and state public assistance entitlement programs, housing programs, health care programs, education programs, court services and law enforcement programs.

Advocates should be particularly attentive for potential discriminatory practices, policies, actions and inactions which impair access to a public service or program.

## **Standard 2**

**SMRLS Advocates, consistent with the client's objectives, should initially explore the potential for effectively addressing a discriminatory practice by way of alternative forms of advocacy such as negotiation, conciliation or mediation.**

**Comment:** Unless the client's problem can be effectively addressed only by means of prompt formal legal action, an Advocate should initially explore the feasibility of addressing the discriminatory practice in a less adversarial manner. For example, in pursuing a reasonable accommodation to achieve equal access to a service or program for a mentally or physically impaired client, proposing that an accommodation plan be collaboratively fashioned in a manner which does not place an undue hardship on the service provider or fundamentally alter the nature of the program might increase the likelihood that the provider will respond in a spirit of cooperation. The same approach might also be advisable when representing clients in other protected classes in circumstances where access to services or benefits is impaired and collaborative modification of policies and procedures might efficiently eliminate the discriminatory practice and its effect.

## **Standards for Handling and Disposition of Cases**

### **Standard 3**

An advocate, in consultation with the supervisor, should determine whether the protections and remedies available under an applicable anti-discrimination law should be pursued solely by SMRLS, jointly by SMRLS and private co-counsel, solely by private counsel, jointly between SMRLS and the appropriate state or federal enforcement agency, or solely by the appropriate state or federal enforcement agency after referral by SMRLS, based on the following considerations:

- 1. The centrality of the discriminatory practice to the client's problem;**
- 2. The importance of pursuing an anti-discrimination remedy in achieving the client's objectives;**
- 3. The resources and experience available in the Advocate's local office;**
- 4. The availability of support counsel to provide assistance;**
- 5. The impact of the discriminatory practice on the client population;**
- 6. The extent to which there is a reasonable likelihood of recovery of statutorily authorized attorneys fees or the recovery of damages out of which attorneys fees might be paid;**

7. The extent to which the relief desired by the client, e.g., damages or attorneys fees, cannot be pursued by SMRLS because of LSC restrictions; and
8. The accessibility of private attorneys in the office service area with the knowledge and expertise needed to provide the advice and representation appropriate in the area(s) of law applicable to the client's circumstances.

#### **Standard 4**

Supervisors, in reviewing the legal work of Advocates pursuant to General Practice Standard 3.4, should evaluate whether a discriminatory practice might be a factor significantly contributing to the client's problem and determine whether such practice has been properly identified and whether appropriate remedies have been explored.

#### **Standard 5**

Support counsel should at all times be available and accessible to Advocates to assist in identifying discriminatory practices which might be significant contributing factors to clients' problems and for consultation about remedial approaches to be pursued.

**Comment:** Support counsel should be available to SMRLS Advocates not only for support on individual client cases but also to provide or facilitate training on applicable anti-discrimination laws, potential remedies to discriminatory practices, and approaches and strategies in addressing such practices on behalf of clients.

**Southern Minnesota Regional Legal Services  
EDUCATION LAW PRACTICE STANDARDS**

**A. Standards for Intake and Priorities**

**Standard 1**

**The primary objective of the Education law Project is to help low income students secure equal educational opportunities and outcomes and to increase the capacities of low income families to effectively interact with the school systems.**

**B. Standards for Client Contacts**

**Standard 2**

**SMRLS Advocates should have a child centered approach in providing legal assistance with respect to a client's educational rights and entitlements.**

**Comment:** The child/student is the direct recipient of the educational services requested in most education law cases handled by SMRLS advocates. Thus even though the initial contact is usually made by a parent, both the child and the parent are considered clients for the purposes of representation. During initial interviews and contacts, SMRLS advocates should explain to the parent and the child that we are representing both, with the understanding that the child's educational rights and needs will be paramount in defining and pursuing the clients' objectives.

SMRLS advocates should strive to develop an effective relationship with both student and parent. All communication with the student should take into account the individual child's age, level of education, cultural context, and degree of language acquisition. If necessary, the student should be interviewed separately to develop a more thorough understanding of the student's needs and problems. In situations where the child is unable to verbalize his educational needs and interests, the parent will be relied upon to provide the necessary information.

A conflict of interest situation between the parent and the child will not usually arise in an education law case. However, if there appears to be a conflict of interest, the advocate should take all reasonable steps to explain the potential conflict and attempt to resolve it, consistent with the Code of Professional Responsibility.

In keeping with the child centered approach, when a parent has consistently failed or is unable to carry out some responsibilities that are crucial to the on going educational process for the child, and critical to the case, the advocate should diligently explore other options to obtain the stated educational and legal assistance objectives for the child.

## **C. Standards for Analysis**

### **Standard 3**

**SMRLS advocates should develop and identify the full range of educational issues relevant to the problem presented by the client, and consistent with the client's legal right to an equal educational opportunity, and equal educational outcomes.**

**Comment:** Advocates should thoroughly investigate each client case to ascertain the student's individual educational needs and the appropriate services required to meet these needs. Advocates should find out about the student's educational history, including assessments and educational placement, and identify all factors that may be contributing to the problem presented by the client. In developing a better understanding of the child's circumstances and the case, advocates should consult with the parent, professionals and others knowledgeable about the student, and also review the child's school, psychological, medical, law enforcement, and other relevant records. Advocates should also consider whether the student may be eligible for services under one or more of the various categories of state and federal education laws.

A major thrust in SMRLS education law practice is to resolve matters through collaboration with the schools in identifying and fashioning creative, constructive and participatory remedies in addressing the child's educational needs and areas of inequitable treatment. Thus, consistent with client's objectives and where appropriate, advocates should utilize alternative dispute resolution methods, including conciliation and mediation.

## **D. Standards for Handling and Disposition of Cases**

### **Standard 4**

**SMRLS advocates should challenge discriminatory and other illegal practices that place low-income children of color at an educational disadvantage. These practices include problems related to racial discrimination in school; Inappropriate or inadequate services to affirmatively meet the language needs and learning differences of students; Inappropriate assessment, placement, discipline and tracking; failure to provide educational opportunities for homeless students; and failure to provide for effective parental participation as contemplated by law.**

Where racial discrimination may be an issue, advocates should consider whether there may be an institutional bias with respect to instructional practices, curriculum content, assessments, student placement, discipline decisions, insensitivity to the student's cultural needs and/or different treatment based on race, color or national origin. Advocates should also consider whether a racially hostile environment exists in the school as a result of derogatory verbal or physical conduct by school personnel or other students.

In representing a Limited English Proficient (LEP) student, advocates should consider whether the school is providing appropriate services based on the language needs and learning style of the student. Other areas that are usually of concern in representing LEP students include, but are not limited to, misclassification of students through inappropriate testing, lack of adequate transitional bilingual instruction in core subject areas such as math and science, lack of interpreters in the schools for effective parental communication with school personnel.

Advocates representing a homeless student should consider whether access to all educational services the student is eligible for, including educational programs, transportation and school meals, are provided the student on the same basis as non-homeless peers.

Where appropriate, a school accommodation plan under Sec. 504 of the Rehabilitation Act should be developed for a student with a handicap affecting learning. The plan should include specific accommodations addressing the student's individual needs and obstacles to academic achievement.

Advocates should also utilize existing laws to help ensure that minority and other disadvantaged students secure all appropriate equal educational opportunities and outcomes. This includes ensuring that a client receives the educational opportunities and support necessary to demonstrate competency in challenging subject matters; and to attain the state and school district graduation standards; and to fully participate in school activities and programs.

### **Standard 5**

**Advocates representing a client on a school suspension, expulsion or exclusion matter, should act expeditiously in protecting the client's rights under the Pupil Fair Dismissal Act Minn. Stat. sec. 127.26 and other federal and/or state laws applicable to the student.**

**Comment:** When a SMRLS advocate has been consulted regarding an expulsion hearing, the advocate should immediately consider whether there is a need to ask for a continuance of the hearing to enable the advocate and the client to prepare adequately for the hearing. Some factors which need to be considered in representing a student in a disciplinary matter include but are not limited to the following:

- a. The school discipline policy and rules, and the consequences for violating the rules, should be **clear and reasonable**. The student should have **written notice of the rules and consequences**.
- b. The school administrator should give the student an **opportunity to be heard** before recommending a disciplinary action;
- c. The sanction imposed or recommended by the school should be **proportionate to the misconduct** and should not be excessive, or unreasonable;

- d. Sanctions should not be merely punitive. Other **alternatives** to out of school suspension or expulsion should be considered, taking into account the **individual educational needs** of the student, and the **particular circumstances** of the case;
- e. The school should provide the student with an **alternative educational program** during a suspension or expulsion;
- f. If the student is a special education student, the legal requirements under **IDEA** should be followed.

### **Standard 6**

**Advocates representing a student with emotional or behavioral disorder, should effectively protect the student's right to an individualized program of instruction in the least restrictive environment.**

**Comment:** The parent and where appropriate, the student, should fully participate in planning and developing an individualized educational program (IEP) for the student. Identification of the students educational needs should include academic, social, behavioral, health management, psychological, vocational, or other need areas having a direct or indirect impact on school performance. Provision of services should be based on the student's needs including appropriate placement; the amount of direct and indirect support services; any related services; the need for a specific behavioral management plan or discipline plan; and any necessary modification of school rules.

### **E. Standards for File Maintenance**

(See General Practice Standards for Internal Systems and Procedures 2.2 through 2.4)

### **F. Standards for Substantive Knowledge**

### **Standard 7**

**Advocates should be knowledgeable about the state and federal laws applicable to the educational problem the client is experiencing.**

**Comments:** There are many federal and state laws impacting on the educational rights of different categories of students. Some of the laws that affect low income students include the following:

#### **Discrimination**

- Title VI, 1964 Civil Rights Act, 42 USC §§ 2000D et seq.

- Equal Educational Opportunities Act of 1974, 20 USC § 1701 et seq.
- Minnesota Human Rights Act
- Office of Civil Rights (OCR) Guidelines and Regulations
- St. Paul and other Public School Policies Against Racial Bias

#### **School Discipline**

- Minnesota Pupil Fair Dismissal Act of 1974, Minn. Stat. § 127.26

#### **Limited English Proficient Students**

- Equal Educational Opportunities Act of 1974, 20 USC § 1701 et seq.
- Bilingual Education Act of 1974 20 USC § 3281 et seq.
- Limited English Proficient Students Act Minn. Stat. §§ 126.261 et seq.

#### **Homeless Students**

- McKinney Homeless Assistance Act 1987

#### **Low Income Underachieving Students**

- Title I Elementary and Secondary Education Act, 20 USC §§ 2701 et seq.

#### **Students With Mental or Physical Disabilities**

- Individuals with Disabilities Education Act (IDEA) 20 USC §§ 1400-85
- Minnesota Special Education Rules 3525.0200 et seq.
- Special Education statute, Minn. Stat. § 120.17 et seq.
- Sec. 504 Rehabilitation Act Of 1973, 29 USC § 706, 34 C.F.R. § 104 et seq.

#### **Vocational Education**

- Carl B. Perkins Vocational and Technical Education Act 20 USC §§ 2301 et seq

#### **Minnesota's American Indian Education Act**



**Minnesota Constitution Education Clause Art. XIII, § 1**

**Federal and State Department of Education Policies and Guidelines**

**G. Standards for Workload (See General Practice Workload Standards 3.2)**

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>O/C</b>	<b>Processed Current</b>
0 - 2 years	35 - 45	40 - 75	15 - 25
2 - 5 years	55 - 65	60 - 100	20 - 35
5 - 10 years	80 - 90	75 - 150	30 - 45
10+ years	100 - 110	150+	45 - 55

**Southern Minnesota Regional Legal Services  
FAMILY LAW PRACTICE STANDARDS**

**A. Standards for Intake and Priorities**

**Standard 1.1**

**See SMRLS Family Law Case Acceptance Standards in the area of critical legal need and contingent critical legal need.**

**Comment:** The primary considerations in accepting a family law case is the prevention of further abuse of a victim of abuse and the maintenance of custody by the primary caretaker.

**Standard 1.2**

**SMRLS advocates should immediately attempt to contact a prospective client within 24-48 hours if the case involves domestic abuse or there are indicators of domestic abuse.**

**Comment:** Advocates must review the client contact standards in dealing with issues of indicators of domestic abuse, provide appropriate information to a prospective client as soon as possible and refer them to an advocacy organization to enable them to proceed pro se, if appropriate, in obtaining an OFP.

**B. Standards for Client Contacts**

**Standard 2.1**

**The following are standards that should be exercised in every case, as noted above; and these provisions should be followed at the outset of representation when the indicators are present:**

- 1. Consider safety issues in every step of representation.**
  - a. Inquire if the client has a safe place to stay; if not, provide appropriate referrals, and allow client to contact them in a confidential setting from your office.**
  - b. Inquire whether address, phone numbers, or other information needs to be kept from the abuser. If so, make appropriate adjustments to documents. Advise client about steps to keep DMV and other information confidential.**

- c. **If client is still living with abuser, clarify how communication with you should occur.**
  - d. **If safety in public is an issue, request that a bailiff be present in the courtroom. In extreme cases, you may need to request a law enforcement escort into and out of the courthouse.**
  - e. **Arrive at court early, have your client meet you at the office and go together, or advise your client to wait near a security guard.**
  - f. **In court or waiting areas position yourself between your client and the abuser.**
  - g. **Advise client that domestic violence is a crime.**
  - h. **Provide client with information on safety plans.**
  - i. **Advise client to call police when threatened or abused. Advocate with law enforcement if necessary.**
  - j. **Seek relief that considers safety issues and minimizes contact between the parties.**
- 2. **Advise client of OFP process. If client decides to apply for OFP, determine whether SMRLS will provide representation. If client is sent through process pro se, advise client of circumstances that might change representation decision.**
  - 3. **Provide information on domestic abuse advocates and services.**
  - 4. **If a child is the victim of sexual or other physical abuse, advise client about appropriate referrals for assessment and/or intervention. If abuse is of a type not easily documented, advise client of consequences of report to child protection that is determined to be unsubstantiated.**
  - 5. **Advise client on how to preserve evidence (e.g., torn clothes, photographs of bruises, journals or calendars, etc.).**

**Comment:** Given the highly emotional nature of most family law cases, to include any contested dissolution, custody or domestic abuse action, the SMRLS advocate must immediately consider safety issues in any case in which there are indicators of domestic abuse, either on-going or threatened.

### **Standard 2.2**

**Dissolution questionnaire may be sent with Representation Agreement and Attestation of Citizenship for completion and return by the client. If feasible, the questionnaire may be completed with the client present or on the phone to ensure sufficient information is provided and the client understands the process.**

**Comment:** A wholly and accurately completed questionnaire is very important and will be the basis for the preparation of future documents in the family law form program currently in use in all SMRLS offices.

### **Standard 2.3**

**SMRLS advocates should determine whether it is safe or appropriate for the client to receive telephone calls at their home or for mail to be sent directly to their home. This should be determined at the initial screening, if possible, or at the initial contact by the advocate in every case.**

**Comment:** In order to ensure the safety of the prospective client, an advocate should not leave telephone messages indicating that they are from legal services, unless it is known that it is safe to call the home of the applicant. Nor should mail be sent to the home of an applicant if they have not previously indicated that it is safe for them to receive mail at their home.

## **C. Standards for Analysis**

(See General Practice Standards 4.1 through 4.5)

## **D. Standards for Handling and Disposition of Cases**

### **Standard 3.1**

**An in-depth personal interview of the client is conducted by phone, or in person, whenever possible, to fully develop the factual basis for the client's position with regard to custody, property and other issues. Ask the client to bring in or send all documents served on them or that are otherwise relevant to the case.**

### **Standard 3.2**

**In all family law cases, determine if spousal or child abuse is an issue. If so, appropriate action or referral should be made for purposes of obtaining an Order for Protection or the intervention of a Child Protection Agency. (See Standard 2.1.)**

### **Standard 3.3**

**Contact attorney for adverse party to determine what, if any, issues can be resolved short of litigation. Also determine if informal discovery is possible and appropriate.**

### **Standard 3.4**

**If litigation is necessary, immediately prepare Answer and Counter-Petition. Interrogatories and Request for Production of Documents may be served at the same time as the Answer and Counter-Petition. The family law form book should be consulted and only those Interrogatories and Request for Production of Documents should be utilized that apply to your case. Don't be limited by the form.**

**Comment: See the Guidelines for Conduct of the Section of Litigation of the ABA. Unnecessary or burdensome discovery requests should not be made in cases where there is no dispute or reason to believe that the opposing party's counsel or the opposing party himself/herself is being less than fully open and truthful on all issues.**

### **Standard 3.5**

**Determine the need for an Application for Temporary Relief. Determine if testimony is necessary and, if so, request it in your Motion.**

### **Standard 3.6**

**Carefully consider all discovery options; utilize the IFP statute for discovery costs; and, if conducting a deposition, consider the pro bono court reporter system.**

### **Standard 3.7**

**If a custody study is prepared, review it thoroughly and determine the qualifications of the custody evaluator in order to assess his/her credibility and the competency of his/her recommendation at trial, if necessary.**

### **Standard 3.8**

**If there is an allegation of endangerment of the children, either while in the custody of your client or the adverse party, seek the appointment of a Guardian Ad Litem at the Temporary Hearing.**

### **Standard 3.9**

**In Order for Protection matters, immediately obtain a copy of the OFP Petition and Ex-Parte Order, thoroughly interview the client about the history of abuse, inform the client about the**

nature of the hearing and collect all evidence such as photos, medical reports and police reports. Be prepared to subpoena witnesses on your client's behalf, if necessary.

#### **Standard 3.10**

SMRLS advocates should not stipulate to the entry of an OFP without a finding of domestic abuse, unless the client is fully informed of the implications of such a stipulation; and should not agree to stipulate to a mutual restraining order absent a counter-petition by the adverse party, unless the client fully understands the adverse implications of such a stipulation and thereafter agrees.

#### **Standard 3.11**

In actions involving domestic abuse, and pursuant to Minnesota law, SMRLS advocates should not encourage nor agree to mediate any issues, without the fully-informed consent of the client. If negotiation and compromise are appropriate, it must be done through the attorneys.

#### **Standard 3.12**

In an OFP matter, seek a full range of relief as permitted by the statute, such as, relinquishment of firearms to law enforcement, which is not specifically required in the statute. Insure that a copy of the Order is provided to the client and all appropriate enforcement agencies that may be required to enforce an OFP. If the abuser is not served personally, follow up with law enforcement to ensure personal service is attained.

#### **Standard 3.13**

Advise the client to inform you immediately if the Order is violated and/or the client is not being assisted in its enforcement by the law enforcement system. Be alert to systemic barriers to the proper and effective implementation of remedies provided by the Domestic Abuse Act.

#### **Standard 3.14**

On receiving a decision of the court, thoroughly review it with your client to ensure that it is fully understood. If warranted, discuss the decision with your supervisor or the Litigation Support Counsel to determine whether to make a motion for new trial or amended findings and/or to appeal. Upon receiving the judgment or order of the court, immediately serve a copy on the adverse party, or their attorney, for purposes of limiting the time of post-trial motions and appeal.

**E. Standards for File Maintenance**

(See General Standards of Practice for "Internal Systems and Procedures" 2.2 through 2.4.)

**F. Standards for Substantive Knowledge**

**Standard 4.1**

All advocates should be proficient and have thorough knowledge in matters arising under the following Minnesota Chapters; 257, Custody and Parentage Act; 257A, Custody and Designated Parent; 517, Marriage; 518, Marriage Dissolutions; 518A, Uniform Child Custody Jurisdiction Act; 518B, the Domestic Abuse Act; 518C, the Uniform Interstate Family Support Act; and 519, the Married Person's Rights and Privileges Act. SMRLS' family law advocates should also be thoroughly familiar with General Rules of Practice for the District Court, Title IV, Rules of Family Court Procedure, Rules 301-312.

**Standard 4.2**

All SMRLS family law advocates should have a thorough knowledge of Federal law impacting family law issues, to include the following:

- The Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963
- The Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738(A)
- The Violence Against Women Act (VAWA), 42 U.S.C. § 13981.

**G. Standards for Workload**

**Standard 5.1**

SMRLS' Advocates shall take cases addressing individual client's critical legal needs as well as complex cases which address systemic legal problems of SMRLS client population particularly in the areas of income maintenance through adequate child support, maintenance, health coverage and child care and protection from abuse. Advocates must be prepared to make knowledgeable and appropriate referrals, particularly to the Battered Women's Advocacy Groups in the oversight and implementation of the Domestic Abuse Act.

**Standard 5.2**

The quantity of open/closed and processed individual cases handled by SMRLS advocates in the area of family law will depend upon the experience level of the advocate and the nature (urban/rural) of the practice. The following are expected caseload ranges for a full-time

**SMRLS advocate practicing only in the area of family law:**

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>O/C Yearly</b>	<b>Current Open Cases</b>
Less than 2 yrs	30-40	40-75	35-45
2-5 years	45-60	60-100	40-50
5-10 years	70-80	75-150	45-55
10+ years	90-100	100-175	50-60

**Comment:** Family law cases can be the most complex and time consuming of all SMRLS' cases. The amount of a particular advocate's caseload should be determined in their annual workplan, with the understanding that the amount of time devoted to any particular family law case varies greatly from an Order for Protection case requiring less than 10 hours of time to a contested custody and property dispute case that can require hundreds of hours and many months in litigation. Those practicing in rural areas must also factor in the additional time required to attend hearings and meet with clients or opposing parties in distant counties.

If an advocates casework is primarily Order for Protection, the yearly processed cases should be higher and the current open caseload lower.

**Standard 5.3**

The amount of time spent by advocates on non-routine, complex community advocacy issues will vary with the particular community and experience level of the advocate and their supporting system. As noted above, all SMRLS advocates must be prepared to recognize and handle more complex cases that address systemic legal problems of SMRLS' clients, particularly in the areas of income maintenance through adequate child support, spousal maintenance, health coverage, child care and protection from abuse issues. SMRLS' family law advocates must be prepared to participate to community advocacy efforts that address all of these issues, as their workload and workplan permits. (Also see General Standards of Practice for "Community Involvement" 6.1.)



**Southern Minnesota Regional Legal Services, Inc.**  
**FARM LAW PRACTICE STANDARDS**

**I. Standards for Intake and Priorities**

**Standard 1.1 Eligibility.**

A person is eligible for services if he or she meets both the general eligibility requirements and the request falls within the Minnesota Family Farm Law Project case priorities. General eligibility requirements are met if the person:

1. Is a state resident;
2. Is or has been a farmer, or a family shareholder of a family farm corporation within the preceding 24 months;
3. Has a debt-to-asset greater than 50 percent (based on the current fair market value of farm assets);
4. Has a reportable federal adjusted gross income of \$15,000 or less in the previous tax year; and
5. Is financially unable to retain legal representation.

**Standard 1.2 Priorities.**

Case priorities will be applied in a manner consistent with the following Project objectives which are of equal value:

1. Preservation of family farm homesteads (land upon which farmers live, not limited to 160 acres);
2. Preservation of farm machinery, equipment, livestock, crops and real estate that are necessary to the maintenance of a viable farm operation; and
3. Release of sufficient income from farm production and/or the extension of sufficient credit for family living and farm operating expenses.

The Minnesota Family Farm Law Project will attempt to provide assistance, either through educational materials, a referral to a private attorney, or direct representation, to all financially eligible farmers whose requests for legal services fit one of the following priority categories:

1. Defenses against foreclosure of mortgages and cancellation of contracts secured by homesteads, or repossession of necessary farm assets on behalf of farmers who:
  - a. wish to continue farming; and
  - b. based on their asset and debt structure, have a reasonable plan to refinance or restructure debt or redeem the farm homestead; or
  - c. have a meritorious defense to creditor actions.
2. Actions to free necessary farm assets or income from enforcement of assignments, security interests or other encumbrances;
3. Challenges to the illegal or arbitrary denial of loans or the illegal or arbitrary servicing of existing loans;
4. Representation of farmers and agriculturally-related small business operators regarding FDIC issues which directly relate to other farm priority issues;
5. Bankruptcy advice, referral, and representation as part of a plan to refinance or redeem the farm homestead or to avoid tax liability;
6. Counseling farmers in preparation for and during negotiation to achieve a work-out agreement;
7. Counseling farmers and negotiating cases involving FmHA actions and in preparation for FmHA hearings;
8. Counseling farmers and negotiating cases involving the secured status of creditors and the structure of future security agreements;
9. Participating in community legal education meetings and preparing legal education materials for farmers; and
10. Consulting with private attorneys who are representing farmers in cases within these priorities.

Because of limited resources, the Project will not be able to individually represent every farmer who has a priority case, even if the farmer is not able to obtain a private attorney. Cases that fit one of the priority categories will not be accepted for individual representation if:

1. The likelihood of success in achieving the client's objective is small;
2. There is insufficient available attorney time to handle the case;

3. Because of the complexity of the farmer's financial affairs or the difficulty of the farmer's legal problem, representation of the farmer will require a substantial amount of attorney time without benefit to a significant number of other eligible farmers;
4. The farm homestead, essential farm assets, or essential farm income are not threatened, either directly or indirectly, by a creditor's actions;
5. The case primarily involves a dispute between farmers;
6. Acceptance of the case would force the Project to decline future representation of a substantial number of farmers because of a conflict of interest; or
7. Adequate representation requires the services of an attorney in another state, and such services are not available.

Following are examples of work which typically would be excluded as being within the priorities for the Farm Law Project:

1. Actions for damages for which private counsel can be obtained;
2. Bankruptcy cases except as described above;
3. Cases involving the FDIC against small business operators that are not related to farm credit issues;
4. Tax planning apart from a case accepted under one of the priorities;
5. Representation in matters of general business and/or commercial law in which a priority is not involved;
6. Cases in which the farm homestead, essential farm assets, or essential farm income are not threatened;
7. Cases that primarily involve a dispute between farmers;
8. Ditch and water cases; and
9. Family law cases.

### **Standard 1.3 Intake Procedures.**

Farm law advocates shall complete the following within one week of the initial call from a potential client.

Complete the intake form and farmer interview form. Farm advocates shall also inquire about the following from the caller before bringing the intake to case acceptance: nature of the farm operation; debt to asset ratio; previous year's adjusted gross income; off-farm income that was not available during prior years; existence of pending legal actions; identity of creditors that are pressuring farmers; conflicts; whether the farmer has been represented by counsel on this matter, the farmer's efforts to obtain private counsel and ability to pay for private counsel; and the farmer's objectives with regard to the farm.

Upon completing a screen a paralegal or attorney may make a preliminary assessment whether the request for services involves a priority matter and it appears the Farm Law Project may otherwise represent the farmer, and whether there is written information available that would be useful to the farmer. If the farmer is clearly not eligible for the request for services or clearly not within the priorities, the paralegal or attorney may so inform the caller, offer to send written materials if available, and refer, if appropriate to the farm advocates, MSBA Lawyer Referral Service, or Social Services. If the applicant is perhaps eligible and a priority case, the applicant should be advised the matter will be reviewed for acceptance and told an approximate date that the caller will be informed of a decision.

## **II. Standards for Client Contacts**

### **Standard 2.1**

The attorney or paralegal shall have a personal conference with the client as soon as possible after the case is accepted.

### **Standard 2.2**

In open cases which will involve substantial representation, the attorney or paralegal should write to the client shortly after reviewing the client's file and meeting with the client to summarize the farm operation, the nature and value of any assets, the nature and amount of any debts including the secured status of any debts, the farmer's objectives, and other essential information. This document is a mutual understanding of the essential facts of the case.

### **Standard 2.3**

The timing and nature of client contacts is dictated by the purpose for which representation is provided, by the ability of the client to understand proceedings, and by the availability of the attorney. Therefore, contacts by an attorney or paralegal must be made to clients immediately or within 24 hours exclusive of weekends when the Farm Law Project has been informed of an emergency or immediately pending deadline. Clients should be informed of any deadlines, scheduled court proceedings, or statutory limitations known to the attorney as quickly as practicable so as to give the clients the maximum time possible to respond to the deadline. In all other instances, the attorney must maintain contact with the client by telephone or in writing as warranted by the nature of the case and representation. The minimal contact for a case which is

not currently active but for which continuing representation is provided is one time every two months.

### **III. Standards for Analysis**

#### **Standard 3.1**

Reserved.

### **IV. Standards for Handling and Disposition of Cases**

#### **Standard 4.1**

Reject. If a decision is made to reject all or a part of the case, a rejection letter should be sent. The letter should include appropriate referrals, the office grievance procedure, and "Jerry Miller" language. The letter sent to the applicant should substantially conform to the assemble reject letter identified as Exhibit A and attached hereto and incorporated herein by this reference.

#### **Standard 4.2**

Open/Close. If general information was provided or if a referral was attempted, a letter summarizing your conversation and/or referral efforts should be sent. The letter should clarify the fact that the Project is not currently representing the caller. Enclosed helpful reading material if appropriate. Portions of the assemble reject letter should be incorporated into the letter as appropriate.

#### **Standard 4.3**

##### **Accepted Cases.**

- A. Schedule a personal conference with the farmer. Obtain a retainer agreement and Attestation of Citizenship, and Responsibilities of a MFFLP client if the farmer's plan of action is consistent with Project priorities.
- B. If the case appears to involve a negotiated work-out with a lender or bankruptcy proceeding, each of the following tasks should be completed if appropriate:
  - 1. arrange for the farmer to complete a FINPAK analysis based on restructured farm operation;
  - 2. review the lender's file;
  - 3. arrange for the farmer to see his/her tax accountant to obtain answers to specific tax related questions;

4. arrange for property appraisal to be completed; and
5. complete a judgment search and UCC financing search.

C. An acceptance letter should be sent.

#### **Standard 4.4**

##### **Referral.**

- A. Callers whose cases are not within MFFLP priorities and who may be able to pay an attorney should be referred to the MSBA Statewide Lawyer Referral Service. A confirming letter should be sent to the caller as soon as possible.
- B. A referral may be made to attorneys in the caller's area who are known to provide representation of the nature requested by the caller.

#### **V. Standards for File Maintenance**

##### **Standard 5.1**

For each client the following executed documents must be contained in the file: representation agreement and Attestation of Citizenship form. The following documents may be in the file as appropriate: Authorization to Release Information, Responsibilities of a MFFLP Client, client address and phone number card.

##### **Standard 5.2**

Additional files shall be opened for each separately identifiable matter for representation. Therefore it is anticipated that there may be multiple files for one client. For each separately identifiable matter of representation, the file should include a separate representation agreement.

##### **Standard 5.3**

Correspondence related to the file should be filed in the client file. Notes should generally be taken reflecting any conversations by telephone or in person and filed in the file. Agreements between parties should as soon as practicable be reduced to writing and a copy retained in the file.

#### **VI. Standards for Substantive Knowledge**

##### **Standard 6.1**

Farm law advocates are expected to be familiar with the following areas of law: bankruptcy; income tax consequences of liquidation; Farm Service Agency and Farm Credit Services loan

application and loan servicing policies; secured transactions; federal law affecting loan rates and payments to farmers; state foreclosure and contract for deed cancellations; and public benefits for financially distressed farmers.

### **Standard 6.2**

Farm law advocates are expected to keep up to date on the laws affecting clients.

### **Standard 6.3**

Farm law advocates are expected to attend state-wide MFFLP meetings.

## **VII. Standards for Workload**

### **Standard 7.1**

Farm law advocates will be expected to have a workload as follows on a yearly basis. Of these, a full-time farm law advocate shall be expected to have no more than five active mediation cases open at one time.

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>Cases In Progress</b>	<b>O/C</b>
0-2 years	15	8	15
3-5 years	15-20	10	20
5-10 years	20-25	12	25
10 + years	25-30	16	30

Comment: representation of financially distressed farmers requires careful legal analysis, a working knowledge of the farmer's debt structure, a reasonably accurate projection of future cashflow, an understanding of the farmer's goals and objectives, and the ability to facilitate a decision-making process if the farmer's goals and objectives are not consistent with the other information that has been gathered. Often, a mediation case involves 75-150 hours of work.

### **Standard 7.2**

Case reviews should occur at monthly full MFFLP staff meetings.

### **Standard 7.3**

Farm law advocates shall share community education, private bar support and outreach responsibilities.

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**Southern Minnesota Regional Legal Services, Inc.**  
**HOUSING LAW PRACTICE STANDARDS**

**A. Standards for Intake and Priorities**

**Standard 1.1**

**SMRLS advocates should not handle unlawful detainer cases when the grounds for eviction are in whole or in part based on criminal drug-related activity where there is credible evidence of such activity and the client is aware of the activity.**

**Comment:** All such cases require thorough investigation to determine if there is such credible evidence. Reviewing search warrant affidavits, police reports and discussions with key witnesses including police officers should be used in making this assessment. Generally, evidence of drug activity determined from these sources is credible. Any case accepted for representation **must** be presented to executive director or his or her designee for approval.

**Standard 1.2**

**SMRLS advocates should not handle unlawful detainer cases when the client does not have children in the household unless the housing is last resort.**

**Comment:** Last resort housing generally means subsidized or public housing. If the client is without resources to afford a new housing opportunity but could afford the current housing, such a circumstance could be construed as last resort.

**B. Standards for Client Contacts**

**Standard 2.1**

**Decisions on case acceptance for unlawful detainers, termination of leases or other cases involving loss of housing should be made within 72 hours of the intake or within a reasonable time prior to the court date or dispossessing event.**

**Comment:** Clients need to plan for potential homelessness. Giving them quick feedback on whether the office will take their case or if their case has merit is important in this planning process. Potential loss of housing is also an anxious time for most clients and the speed of our response is very important to most clients.

**Standard 2.2**

**Clients who face imminent loss of housing should be called back, as soon as possible, but no later than the same day of the call from the client. In non-emergency type cases, advocates**



**should make every effort to contact the client within 24 hours but no later than 48 hours. If contact cannot be made, a "no contact" letter should be sent to the client within said time period.**

**Comment:** Examples of emergencies are lockouts, unlawful utility disconnections, orders to vacate by city code inspection departments, expiration of an appeal period or cases involving dangerous conditions in housing where the client could be injured.

**C. Standards for Analysis (See General Practice Standards 4.1 through 4.5)**

**D. Standards for Handling and Disposition of Cases**

### **Standard 3.2**

**In settlement discussions with clients in unlawful detainer actions or lease termination cases, SMRLS advocates shall discuss all factors for or against settlement including the availability of other housing in the event the client decides to move, the impact on clients rental record, and the impact of having to move with little or no notice if the client is unsuccessful.**

**Comment:** Many clients make decisions respecting their housing without full knowledge of the implications. The significant decrease in housing opportunities for tenants in conjunction with stringent tenant screening requirements is a factor that many clients are not aware of when agreeing to give up their housing through settlement.

### **Standard 3.3**

**In eviction cases where the cause for the lease termination is related to a domestic abuse situation on the premises, the housing advocate is expected to counsel the client on remedies and resources available to victims of abuse and to make appropriate referrals to clients with respect to available resources.**

**Comment:** See Domestic Abuse Section under SMRLS Standard of Practice for Family Law for further protocol.

### **Standard 3.4**

**In denial of housing or eviction cases, the housing advocate should make inquiry to determine if the denial of housing or eviction is based on discrimination against a member of a protected class under state, local or federal anti-discrimination laws.**

**Comment:** See SMRLS practice standards for " Identifying and Addressing Discriminatory Practices" for more specific protocol.

E. **Standards for File Maintenance** (See General Standards of Practice for "Internal Systems and Procedures 2.2 through 2.4

F. **Standards for Substantive Knowledge**

**Standard 4.1**

**All housing advocates should be proficient in matters arising under Minn. Stat. § 504 and § 566 (Unlawful Detainers and Tenant's Remedies), Mortgage Foreclosure and Contract for Deed Law as it relates to the loss of housing to clients, Subsidized and Public Housing Laws in case priority areas and Anti-Discrimination Laws as they relate to case priority areas.**

G. **Standards for Workload**

**Standard 5.1**

**SMRLS' Advocates shall handle cases addressing individual client problems and complex cases which address the systemic legal problems of SMRLS client population.**

**Comment:** Individual client problems would include cases such as unlawful detainers, illegal lockouts, utility shut-offs, rent escrow for repairs and mortgage foreclosure defense, etc. Complex cases which address systemic legal problems include cases such as a public housing or discrimination case attacking an unfair or illegal policy which negatively impacts many clients. Such cases could also involve a community advocacy effort such as a collaboration with other community groups or governmental agencies which would preserve or create affordable housing or attach broad practices of discrimination.

**Standard 5.2**

The quantity of open/closed and processed individual cases handled by SMRLS Advocates will depend on the experience level of the advocate and the nature (urban/rural) of the practice. The following are expected caseload ranges for SMRLS Advocates:

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>O/C's Yearly</b>	<b>Processed Current</b>
0-2 years	40-55	125-150	10-15
3-5 years	50-70	150-175	15-20
6-9 years	70-90	200-225	20-25
10+ years	90-110	225-250	25-35

**Comment:** Offices with a rural practice will, as a general rule, handle more o/c cases. Urban offices will handle more processed cases in part because of the proximity of the courthouse to the office and the increased demand. Expected case numbers should be included in the advocate's yearly workplan.

### **Standard 5.3**

**The amount of time spent by advocates on non-routine complex community advocacy and litigation shall depend on the experience level of the advocate.**

**Comment:** The actual time allotted should be negotiated in the advocate's yearly workplan. The nature of the complex work identified would likely impact the decision of the amount of time allotted. (For example of complex work that are considered important and expected see Comment under Standard 1.1.)

### **Standard 5.4**

**Housing advocates shall be involved in community education of the client community.**

**Comment:** See, General Standards of Practice "Community Involvement" 6.1.

**Southern Minnesota Regional Legal Services, Inc.  
IMMIGRATION LAW PRACTICE STANDARDS**

**I. Standards for Intake and Priorities**

**Standard 1.1**

SMRLS Advocates shall only provide legal representation for or on behalf of eligible aliens while engaged in activities funded by SMRLS. In addition to U.S. citizens, aliens within the following categories are eligible for SMRLS representation: 1) an alien lawfully admitted for permanent residency; 2) H-2a workers in matters relating to wages, housing, transportation, and other employment rights provided in the worker's contract; 3) an alien who is married to a U.S. citizen, is the parent of a U.S. citizen, or is an unmarried child of a U.S. citizen and has filed an application for permanent residency, adjustment of status or suspension of deportation and such application has not been rejected; 4) refugees; 5) asylees; and 6) conditional entrants.

**Comment:** Intake, brief telephone advice and consultation, referral services, and community education activities addressed to the general client community are permitted even if ineligible aliens receive benefits from these activities. Aliens who would have been eligible for SMRLS services but for their immigration status shall be referred Legal Assistance of Ramsey County. Where legal representation is provided to eligible clients and the representation also benefits an ineligible alien, the eligible client must have a specific legal right or interest in the action.

**Standard 1.2**

For eligible clients, the following types of cases may be accepted: 1) Naturalization (INS Forms N-400 and N-600); 2) Relative and fiance petitions (Forms I-130 and I-129) including consular processing; 3) Refugee/Asylee Relative Petitions (Form I-730); 4) Adjustment of Status (Form I-485); 5) Deportation; 6) Travel Documents (Form I-102), and 7) Humanitarian Parole.

**Comment:** Cases involving student visas, visitors' visas and labor certifications are never accepted. If an eligible client presents other immigration issues, the case may be accepted after consultation with the Advocate's supervisor.

**II. Standards for Client Contacts**

**Standard 2.1**

SMRLS Advocates should be aware of cultural differences which may affect the outcome of the case.

**Comment:** Clients with immigration concerns frequently come from cultural backgrounds that vary significantly from the traditional American culture. For example, many Southeast Asians state their surname first, followed by their first name and then their middle name. Cambodians often take their father's name as a surname. In the Hmong language, the use of the words brother and sister can refer not only to siblings but also to first cousins. All petitions and applications should be carefully checked for accuracy before submission to the Immigration and Naturalization Service.

## **Standard 2.2**

**Advocates must keep clients informed of the status of their case.**

**Comment:** Clients should receive full information on developments in their case as soon as possible after the Advocate becomes aware of such information. Ordinarily, there should be contact with each client every 30 days. When a case is inactive or non-current, less frequent contact may be warranted, though in no case should contact be less often than every 90 days.

Clients should be provided with copies of petitions and/or applications, supporting documents, receipt notices, approval notices, major correspondence, and all letters or requests for information from the Immigration and Naturalization Service or a Consular Officer. Clients with non-current petitions should be added to the Visa Bulletin mailing list so they can monitor the progress of their case.

## **III. Standards for Analysis**

### **Standard 3.1**

**SMRLS Advocates should develop and identify the full range of immigration issues relevant to the problem presented by the client and explain all potential resolutions to the client.**

**Comment:** At the initial interview, many clients have already determined how their problem should be resolved. SMRLS Advocates shall discuss all options and explain why an alternative solution may be more efficient or have a more long term effect.

### **Standard 3.2**

**All non-citizen clients should be assessed for eligibility for naturalization and, if interested, shall be advised of the benefits of and procedures for naturalization. Referrals to citizenship and English as a second language classes shall be made if appropriate.**

**Comment:** Naturalized citizens are able to vote, obtain federal government jobs, travel with a U.S. passport and petition to bring relatives to the U.S. In addition, to be eligible for federal means tested programs such as Food Stamps and SSI, applicants must be citizens of the United States (with limited exceptions). Clients are also protected from deportation by becoming

States (with limited exceptions). Clients are also protected from deportation by becoming naturalized citizens. Since clients with limited English skills are often unaware of the naturalization requirements or the process, SMRLS Advocates will routinely provide this information. The client should be advised to seek legal advice before filing for naturalization if he has been arrested, charged or convicted of a crime, there is concern about moral character, or there is a question about continued residency in the U.S.

#### **IV. Standards for File Maintenance**

##### **Standard 4.1**

**SMRLS Advocates must maintain a file for each client matter which 1) Records all materials facts and transactions; 2) Includes copies of all petitions and/or applications, documentation and correspondence; and 3) Provides a detailed chronological record of work done on each matter.**

**Comment:** Clients often request assistance in filing multiple applications. A file must be opened and documented for each application.

#### **V. Standards for Workload**

##### **Standard 5.1**

**The quantity of open/closed and processed cases handled by SMRLS Advocates will depend on the experience level of the Advocate and the type of cases being handled. Following are minimum expected caseloads from SMRLS Advocates on a yearly basis:**

<b>ADVOCATE EXPERIENCE</b>	<b>PROCESSED CASES CLOSED YEARLY</b>	<b>O/C</b>	<b>OPEN CASES</b>
Less than 2 years	40	125-150	50
2-5 years	55	150-175	75
5 - 10 years	70	200-250	100
10+ years	85	250-300	125

##### **Standard 5.2**

**Consistent with SMRLS established priorities, SMRLS Advocates should undertake community legal education which responds to client needs, advises clients of their legal rights and responsibilities, and enhances the capacity of clients to assist themselves collectively and individually.**

**Comment:** See comment to Standard 6.1 in the General Practice Standards.  
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**Southern Minnesota Regional Legal Services, Inc.**  
**PUBLIC BENEFITS LAW PRACTICE STANDARDS**

**Standard 1.0 - Intakes and Priorities**

**Standard 1.1**

**SMRLS Advocates should respond to initial contacts by potential clients to preliminarily assess the person's problem and determine whether immediate action is necessary to protect the person's rights.**

**Comment:** This initial assessment should include: responding to intake calls either by telephone or letter within 24 hours of intake call or sooner if there is an emergency; starting a time sheet to document first telephone call and action taken; determining appeal deadlines; if necessary, taking action as appropriate to protect appeal deadlines; conducting an interview to identify

1. Agency involved
2. Nature of the problem
3. Client's goals
4. Explain process to client
5. Whether there is an emergency
6. Obtain necessary releases of information, citizen ship form and retainer agreement.
7. If going to open for investigation purposes only, clearly disclose this on the retainer agreement
8. Whether it is an issue which the client can handle with advice only; and if the case is not amenable to handling with advice only, formally open file.

**Standard 2.0 - Standards for Client Contacts**

(Refer to General Standards)

**Standard 3.0 - Standards for Analysis**

**Standard 3.1**

**SMRLS Advocates should investigate relevant factual and legal aspects of a client's case.**

**Comments:** The investigation should include the following: check the appropriate Manual, State rule, State statute, federal rule, federal statute as needed to determine the relevant; develop facts both formally and informally if possible to test the theory of the case. This may include getting client to assist in getting written statements from people. The factual

development may need to include following up leads as necessary, identifying physical evidence which could support client's version of the facts, and such efforts should be documented in the file. Where possible, the client should be involved in gathering information, including the identification of witnesses.

### **Standard 3.2**

**SMRLS Advocates should analyze a decision and discuss the case with the client.**

**Comments:** This means the Advocate should explain the decision to client. If the decision is favorable, explain what the client should expect next; if unfavorable, discuss the client's appeal rights and appeal deadline. The Advocate should consult with his or her supervisor about whether to appeal the negative decision. If decision is not to appeal, give client sufficient notice to try to obtain alternate counsel. If time to appeal is at least 30 days, notify the client of decision not to appeal within 10 days of receipt of decision; if the time to appeal is less than 30 days, notify the client of decision not to appeal within 24 hours of receipt of decision.

## **Standard 4.0 - Standards for Handling and Disposition of Cases**

### **Standard 4.1**

**SMRLS Advocates should prepare the case and the client for trials or hearings.**

**Comments:** The Advocate should determine when a hearing is likely and keep the client informed with progress of the case. This means the Advocate should notify the client of hearing date when the date is known. There should be minimum contact of once each 30 days for lengthy cases such as disability cases.

The Advocate should negotiate directly with appropriate workers, consistent with the client's objectives. All settlement offers must be accepted or rejected by the client after consulting with you and discussing the choices, benefits and consequences of accepting the offer. Prior to the hearing, prepare witnesses, gather and organize documentary evidence, formulate legal arguments including basis for admission or objection to evidence, and prepare a hearing memorandum where appropriate. As appropriate, prepare direct and cross examination questions prior to the hearing.

### **Standard 4.2**

**SMRLS Advocates should follow up decisions to assure they are implemented.**

**Comments:** If the decision made significant law or procedure, or if there were pleadings which might be helpful to other advocates statewide, write up summary for the Coalition.



## **Standard 6.0 - Standards for Substantive Knowledge**

### **Standard 6.1**

**SMRLS Advocates should be familiar with and be able to advise or represent clients in a variety of case types.**

**Comment:** Case types include but are not limited to: AFDC (TANF), FGA, Food Stamps, GA, Unemployment insurance benefits, MA & GAMC, SSA/SSI, and other miscellaneous types such as child care, employment and training disputes, workfare issues, child welfare, and foster care.

### **Standard 7.0 - Standards for Workload**

**The number of open/close and accepted cases handled by SMRLS advocates will vary depending on the advocate's years of experience, whether s/he is responsible for more than one substantive area of law and whether s/he has an urban or rural practice. The following are expected annual caseload ranges for SMRLS advocates:**

means the Advocate should explain the decision to client. If the decision is favorable, explain what the client should expect next; if unfavorable, discuss the client's appeal rights and appeal deadline. The Advocate should consult with his or her supervisor about whether to appeal the negative decision. If decision is not to appeal, give client sufficient notice to try to obtain alternate counsel. If time to appeal is at least 30 days, notify the client of decision not to appeal within 10 days of receipt of decision; if the time to appeal is less than 30 da

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>Open Cases</b>	<b>O/C</b>
0-2	45-60	20-30	40-75
2-5	60-125	30-60	60-100
5-10	125-135	60-65	75-150
10 or more	135-150	65-75	100-200

These numbers were calculated by using the SMRLS downtown office, which includes a unit handling only benefits cases and where hearings are held relatively close to the office. On the other hand, this office does an unusually high amount of community advocacy work. It is our feeling that these numbers should be monitored to see if they accurately and reasonably reflect expectations for advocates on a region wide basis. If the vast majority of a casehandler's caseload is social security, the expectation is that there will be a larger number of open cases at any one time and fewer o/c's.

**PRACTICE STANDARDS FOR SOCIAL SECURITY/PUBLIC BENEFITS CASES  
REFER TO PUBLIC BENEFITS PRACTICE STANDARDS ALSO**

**Standard 1.0 - Intakes and Priorities**

(Refer to General Standards and Public Benefits Standards)\_

**Standard 2.0 - Standards for Client Contacts**

**Standard 2.1:** SMRLS advocates should, promptly and at the outset of representation, develop the factual basis for the disability claim by contacting sources that SSA recognizes as relevant to the disability determination.

**Comments:** The critical elements of a disability case include the client's treating physician opinions, and other sources relevant to the client's ability to perform work activities. These sources include records from Vocational Rehabilitation, family social services, worker's compensation, employers, and contact with family or friends. The client must be consulted and should determine who is contacted, but must be advised about the risks of failing to provide adequate evidence of disability. Since the client bears the burdens of proof and production, the advocate must work cooperatively with the client from the onset of the case.

**Standard 3.0 - Standards for Analysis**

(Refer to General Standards and Public Benefits Standards)

**Standard 4.0 - Standards for Handling and Disposition of Cases**

**Standard 4.1:** SMRLS advocates should build the factual basis for the client's claim from available evidence, and evidence that can be developed.

**Comments:** One of the critical elements in an SSA case is determining, at the outset of the case, *why* the disabled person has been denied. Usually there is a critical element of the required proofs missing from the case, at least from the SSA perspective. The advocate must take steps to supply this critical evidence.

These steps include gathering medical evidence not previously submitted and consulting with the client's doctors or other witnesses to create additional evidence that is necessary for the case. On occasion, this means directing the client to seek medical treatment for problems that have gone untreated, particularly mental health problems. Because SSA relies heavily upon the medical evidence in the case, the advocate must evaluate what medical weaknesses are present in the case and determine if those weaknesses can be resolved by further development of the record.

In instances where the medical evidence does not support a claim for disability, it is important that the advocate communicate this problem to the client immediately. Cases should be denied *promptly* where there is little likelihood that the gaps in the medical evidence can be resolved favorably for the client. Clients should be referred to other benefit programs for which they might have eligibility.

**Standard 4.2:** SMRLS advocates should use questionnaires, forms, and training materials that are available internally and from other sources (NOSSCR; WEST LAW digest, Legal Services Coalition) to develop the evidence in the case.

**Comments:** There have been many trainings by the Legal Services Coalition where advocates from SMRLS have provided their forms and techniques for preparing a Social Security case. The SMRLS advocate is expected to use these resources.

### **Standard 5.0 - Standards for File Maintenance**

(Refer to General Standards)

### **Standard 6.0 - Standards for Substantive Knowledge**

**Standard 6.1:** SMRLS advocates should be familiar with the unique rules and procedures that govern social security cases.

**Comments:** In the Social Security process, each stage in the application/appeal process has deadlines. Some of those deadlines may be waivable if the client has good cause, but failure of the advocate may not be good cause unless there are some extenuating circumstances. The Social Security system also is governed by specific regulations, with which the advocate must be familiar or must review immediately upon receipt of a new case. These regulations include the Listing of Impairments, and procedural steps for gathering and submitting evidence. There are also SSA Rulings, which provide clarification as to how SSA views certain regulations and there is a Program Operations Manual (POMS) which occasionally can provide guidance as to the SSA position. Because there is an adverse party (SSA) but no adverse counsel, the advocate must anticipate by being familiar with the law what the SSA position is likely to be.

In addition to SSA rules, there is a substantial body of caselaw that has developed around the regulatory process. The advocate needs to do necessary caselaw research in order to build a case, from the client's perspective, that will still meet the requirements of SSA law.

**Standard 6.2:** Ethical questions that arise in a social security case should be discussed with a supervisor or manager.

**Comments:** Because SSA programs involve persons who suffer from mental illness or persons who are children, there are possible ethical problems that may arise in the representation. These issues should always be discussed with an immediate supervisor, or manager, and the file should document the discussion and resolution of the question.

### **Standard 7.0 - Standards for Workload**

The number of open/close and accepted cases handled by SMRLS advocates will vary depending on the advocate's years of experience, whether s/he is responsible for more than one substantive area of law and whether s/he has an urban or rural practice. The following are expected annual caseload ranges for SMRLS advocates:

<b>Advocate Experience</b>	<b>Processed Cases Closed Yearly</b>	<b>Open Cases</b>	<b>O/C</b>
0-2	45-60	20-30	40-75
2-5	60-125	30-60	60-100
5-10	125-135	60-65	75-150
10 or more	135-150	65-75	100-200

These numbers were calculated by using the SMRLS downtown office, which includes a unit handling only benefits cases and where hearings are held relatively close to the office. On the other hand, this office does an unusually high amount of community advocacy work. It is our feeling that these numbers should be monitored to see if they accurately and reasonably reflect expectations for advocates on a region wide basis.

**Southern Minnesota Regional Legal Services, Inc.**  
**SENIOR LAW PRACTICE STANDARDS**

**General Considerations**

**It is a primary goal of SMRLS' elderly law projects to help our clients attain and maintain the highest level of independence, self-determination, and dignity reasonably possible.**

**I. Standards for Intake and Priorities**

**Standard 1.1**

**Communicate a caring attitude to callers.**

**Comment:** Whenever possible, we should offer senior citizen clients a sympathetic ear during client intake. At times, there is nothing that anyone can do to resolve the client's legal problems, but clients often feel very satisfied simply when someone who cares listens. To make the best use of attorney, paralegal and other paid staff time, senior citizen projects should consider the use of volunteers to handle senior citizen intake.

**Standard 1.2**

**Do not create unrealistic expectations.**

**Comment:** At the initial contact with the client, and in future contacts as well, avoid the creation of unrealistic expectations. To the extent that a full explanation of limitations in the services of our offices can provide is explained to clients, clients can enter into the attorney/client relationship with open eyes. Some of the most serious client problems arise when a client feels that he or she is entitled to something that he or she is not receiving. Often, that misunderstanding is the result of clear information not being provided at the time of the initial contact.

**Standard 1.3**

**The Senior Citizen - not the relative, neighbor, or other caller - is the client.**

**Comment:** If someone is calling on behalf of the senior citizen:

- a. Clearly state that the senior citizen would have to be the client and that any information given by the caller is not protected by the attorney/client privilege;
- b. Make every effort to speak with the client personally if at all possible; and

- c. Make your own judgment as to whether the third party's desires are in the client's best interest. If there appears to be a conflict of interest, explain that you are not able to provide information without talking to the senior citizen.

#### **Standard 1.4**

**Prioritize community legal education, to the extent practicable, to those elders with the greatest economic and social need and on those subject areas which have the greatest impact on low income and socially needy elderly.**

**Comment:** The purpose of this standard is two-fold. First, it is consistent with the Older Americans Act's requirement that legal services be provided with an emphasis on seniors with the greatest economic or social need. Second, community education provides a forum for advertising the availability of our services. To the extent we are able to target our community legal education to low income or other needy elderly, we increase the likelihood of those people coming to us for help. However, grant requirements, funder expectations, promotion of good public relations, or significant community need may make it impracticable to always target community education to economically and socially needy elders. Therefore, legal education to broader groups and on broader subject areas is appropriate when it will ultimately increase our ability to provide services to low income or other needy elderly.

## **II. Standards for Client Contacts**

#### **Standard 2.1**

**In telephone contacts, identify yourself clearly and fully. Use plain language when speaking with clients.**

**Comment:** Particularly when telephoning a senior citizen client for the first time, it is very important to identify yourself by speaking slowly and clearly and informing the client what office you are calling from. Speak loudly and without using big words or "legalese." If the client is familiar with someone else in your office, let the client know you work with that person. When elderly clients do not clearly understand who is calling, suspicion sometimes causes them to say whatever they believe will get the caller off the phone. You may go away from a conversation believing the client's problem is solved simply because he or she became fearful and did not listen to or understand what you were saying.

#### **Standard 2.2**

**Good legal advice is worthless if the client does not grasp it. Make sure clients understand and can remember the information we give them.**

**Comment:** While most elderly clients are fully able to understand and communicate effectively with a legal representative, a significant segment of the socially needy population served by Title III projects will suffer from hearing problems, memory deficits, and/or

cognitive impairments. Therefore, an important part of our job is to find ways to ensure that our clients can understand and retain, and thus benefit from, the information we provide them.

### **Standard 2.3**

**Whenever possible, satisfy the client. Explain our program's limitations when we cannot meet their needs.**

**Comment:** The advocate should spend enough time with each client to ensure that the client is generally satisfied with our service, or that the client understands why we cannot provide the desired service, if that is reasonably possible. This standard comes in large part from our desire to meet our clients' needs. This standard also comes in part from the reality that decisions about funding for seniors' projects are made on a local level by boards that include people who do not have a thorough understanding of our work. Dissatisfied clients may have a large impact on funding decisions and may jeopardize funding to help meet the legal needs of other low income and disadvantaged elderly.

## **III. Standards for Analysis**

### **Standard 3.1**

**If a client is under a mental disability, we have a heightened responsibility to help the client benefit from our services.**

**Comment:** We must always evaluate the client's ability to understand the facts and legal issues involved with his or her problem. To the greatest extent possible, the advocate should provide sufficient information to enable the client to make informed decisions about the case. When the client is not mentally able to make informed decisions, the case handler should take appropriate steps as outlined in Rule of Professional Conduct 1.14 to substitute judgment and otherwise safeguard the client's interests.

## **IV. Standards for Handling and Disposition of Cases**

### **Standard 4.1**

**Make appropriate referrals whenever possible.**

**Comment:** Particularly when we cannot handle the case, make sure to give appropriate referrals to other resources that may be able to help the clients. Written materials, such as an advice letter, a conciliation court pamphlet, or copies of relevant community education articles are particularly helpful in ensuring that clients can understand and retain the information that is provided to them orally.

## V. Standards for File Maintenance

(Refer to General Standards for Practice).

## VI. Standards for Substantive Knowledge

(Refer to General Standards for Practice).

## VII. Standards for Workload

(Refer to General Standards for Practice).

CASELOAD STANDARDS				
<i>less than 2 years of experience</i>			<i>3-5 years of experience</i>	
<u>O/C</u>	<u>100-200/yr</u>		<u>150-250/yr</u>	
<u>Cases</u>	<u>25-40/yr</u>		<u>35-50/yr</u>	
<u>Cases open on any day</u>	<u>15-30</u>	<u>Legal Ed.</u> <u>0-10/yr</u>	<u>25-40/yr</u>	<u>Legal Ed.</u> <u>5-20/yr</u>

<i>5-10 years of experience</i>			<i>more than 10 years of experience</i>	
<u>O/C</u>	<u>175-350/yr</u>		<u>200-400/yr</u>	
<u>Cases</u>	<u>45-70/yr</u>		<u>65-90/yr</u>	
<u>Cases open on any day</u>	<u>35-45</u>	<u>Legal Ed.</u> <u>5-30/yr</u>	<u>40-55/yr</u>	<u>Legal Ed.</u> <u>5-40/yr</u>

Caseload numbers will vary depending on the actual demand in a given service area for particular services (processed cases, o/c cases, community education, etc), the amount of travel time to deliver services in rural areas, whether the advocate practices in areas other than elder law, the amount of secretarial and paralegal support available to the advocate, and whether the advocate has other responsibilities, such as supervision, grants management, and complex litigation or community advocacy.